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IN THE
Supreme Court of the United States
OCTOBER TERM, 1943.

No. 752

In the Matter
of

GEORGE ARKY, formerly doing business as Lawrence
Electric Construction Co., Bankrupt,
Petitioner,

LOUIS P. ROSENBERG, Trustee,
Respondent.

**BRIEF OF RESPONDENT-TRUSTEE IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI.**

CHARLES E. BERNSTEIN,
Counsel for Respondent-Trustee,
Louis P. Rosenberg.

LOUIS P. ROSENBERG,
Of Counsel.



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The Circuit Court unanimously affirmed the order of the District Court denying a discharge in bankruptcy to the petitioner.

The Facts.

The bankrupt filed a voluntary petition in bankruptcy on April 30, 1942. On August 9, 1939, he borrowed the sum of \$504 from Public National Bank and did on that day issue a financial statement in writing (Trustee's Exhibit I, p. 28) which has been found by the Courts below to be "materially false" (pp. 34, 36, 46).

The bankrupt discontinued business on December 31, 1939 (p. 15, fol. 44). On August 9, 1939, the date of the issuance of the financial statement, Williamsburg Electrical Supply Corp. was a creditor of the bankrupt

(Trustee's Exhibit II, p. 32), and the liability to this creditor is listed in the schedules filed by the bankrupt.

The indebtedness to Public National Bank was finally satisfied by the bankrupt on March 7, 1941 (p. 22, fol. 66), and the voluntary petition in bankruptcy was filed on April 30, 1942.

The Issue.

The record below presented for review the following question of law:

Whether a discharge may be denied to a bankrupt because of the issuance of a false financial statement in writing respecting his financial condition, even though the loan was repaid about a year before the bankruptcy petition was filed.

No constitutional question is involved, but merely the interpretation of the requirements of the provisions of Section 14c (3) (11 U. S. C. A. Section 32 (c)(3)) of the Bankruptcy Act.

POINT I.

There is no necessity for a review by this tribunal. No constitutional question is involved and there is no conflict, as is claimed, among any of the circuits on the question here involved.

This proceeding involves the application of Section 14c (3) of the Bankruptcy Act (11 U. S. C. A. Sec. 32 (c)(3)). The bankrupt issued a false financial statement in writing to induce a loan of \$504. The repayment of the indebtedness prior to the commencement of the bankruptcy proceedings did not excuse the bankrupt's

misconduct (*In re Ernst* (C. C. A. 2d), 107 F. (2d) 760; *Sadler v. Hirshberg Bros.* (C. C. A. 6th), 23 F. (2d) 245; *In re Weinstein*, 34 F. (2d) 964, D. C. S. D. Cal.).

To hold otherwise would encourage the issuance of false financial statements by debtors whose dishonesty and bad faith would be condoned by the repayment of the indebtedness to the defrauded creditor prior to commencement of bankruptcy proceedings. This would be a distortion of the spirit and intent of the Bankruptcy Act which has for its purpose the granting of discharges to only those who were honest in their dealings with creditors.

POINT II.

There is no conflict or confusion in the decisions which construe Section 14c(3) of the Bankruptcy Act (11 U. S. C. A. Sec. 32(c)(3)).

The ruling of the Circuit Court is not in conflict with the authorities referred to in the petition for the writ (pp. 5, 6). The facts in *In re Milhoff* (a Special Master's report, approved by the District Court), are clearly distinguishable, but even if the decision should appear contrary, it is significant that its reasoning has not been followed by other Courts in the many decisions relating to this subject which have since been rendered and indeed, was criticized in *Matter of Weinstein, supra*, where it is said:

"I doubt the soundness of the reasoning of the special master in the *Milhoff* matter and do not find that this decision has met with approval by other courts."

Moreover, the false financial statement is not "unrelated" with the subject matter of the bankruptcy proceedings. This bankrupt issued a false financial statement

and engaged in this dishonest practice while conducting business in which he incurred the debts which he sought to discharge by the filing of the voluntary petition in bankruptcy. The bankrupt's misconduct was a matter properly investigated by the trustee in bankruptcy and, the establishment thereof, sufficient ground for a denial of the discharge.

The other contention made by this petitioner is that there should be an implied Statute of Limitations or a time limit within which a false financial statement may be effectively urged to bar a bankrupt's discharge. This issue was also raised, but overruled in *In re Weinstein*, *supra*:

"It is not the policy of the law that a man dishonest at heart and who knowingly engages in fraudulent practices should be encouraged therein by raising a technical bar or time limit and be released from his obligations and permitted to again pray upon the business world. It is the character and conduct of the bankrupt towards his creditors at large which the court gives consideration, rather than conferring a power upon one particular creditor to grant or deny a release from the bankrupt's debts." * * *

• • •

"In view of these and many other similar statements of the courts, I can see no reason why the court should legislate into existence a statute of limitation when Congress has not seen fit to create such a limit. Neither do I find occasion to apply any rule of equity, assuming the court possesses such power, in favor of this bankrupt."

The decisions of the various Federal Courts are consistent and, wherever the question was raised, the Courts

have indicated that Congress did not enact a Statute of Limitations and accordingly, no such intent would be inferred. Judge Inch did not indicate "a hope for Congressional action to change the holding he felt constrained to follow" (p. 12 of petition for writ), but made the observation that there was no Statute of Limitations and until Congress enacted such statute, no time limitation would be assumed.

CONCLUSION.

It is respectfully submitted that the petitioner has shown no reason in law or in fact which would justify this Court in granting his petition for certiorari in this case, and that therefore, the petition should be dismissed.

Respectfully submitted,

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